



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 11/12/02
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Variance No. PL-2002-0400 to Retain a Storage Room; to Allow 33 Percent of Rear Yard to be Covered; an Exception to the City's Design Guidelines - Ernest Armijo (Applicant/Owner) - The Property is at 26476 Cascade Street

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution finding the project categorically exempt from CEQA review and denying the variance and the exception.

DISCUSSION

At its September 12, 2002, meeting, the Planning Commission denied an application (6 Ayes and 1 No) to retain an 11'6" x 22' storage room that was built alongside a garage without a building permit. The storage room is constructed of plywood with a corrugated metal shed roof, whereas the house has a stucco exterior with a hip roof with composition shingles.

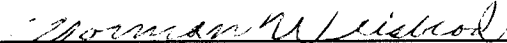
The storage room is 4' 4" from the rear property line where a minimum of 10' is required. The room also covers 33 percent of the required rear yard; the maximum coverage permitted is 20 percent. If the shed were modified to provide a 10-foot rear setback, it would still exceed the maximum 20 percent coverage of the required rear yard. The property contains adequate area to locate either an attached or detached structure that conforms to zoning requirements. The City's Design Guidelines require that additions to single-family dwellings be constructed of materials used in the dwelling and that the design incorporate elements found in the house, such as the roof form. Neither the materials nor the design of the storage room reflects those of the house.

The appellant indicates that the storage room was constructed 35 years ago before he purchased the property, although there is no way to verify the accuracy of this statement. He states that the City's regulations for legal non-conforming structures should enable him to keep the shed as long as he resides at the residence. Legal nonconforming structures are only those structures that were legal at the time they were constructed, which requires a building permit. A search of the files for the applicant's property showed no evidence of a building permit for the storage room.

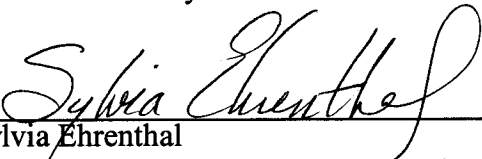
At the Planning Commission hearing, two neighbors spoke in support of the variance to retain the shed and one neighbor opposed the variance. Several telephone calls had been received by staff from neighbors who objected to the variance.

Should the variance be approved, the applicant would have to obtain a building permit and the structure would have to conform to the Uniform Building Code. Because of the room's substandard construction and its deteriorated condition, major reconstruction or demolition of the structure is the most likely outcome. Given these circumstances, the Planning Commission felt that any new construction should conform to the required setbacks and the City's Design Guidelines.


Prepared by:


Norman Weisbrod
Consulting Project Planner

Recommended by:


Sylvia Ehrental
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A. Planning Commission Minutes and Staff Report, dated September
12, 2002
Plans
Draft Resolution

11/5/02

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, September 12, 2002, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: S. Ehrenthal, N. Weisbrod, R. Patenaude, M. Conneely,

General Public Present: Approximately 200, Overflow room was used.

PUBLIC COMMENT - There was no public comment.

AGENDA

1. Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure - The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District
2. Referral by the Planning Director - Administrative Use Permit Application No. PL-2002-0262 - Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) - Request to Convert an Existing Theater to a Religious Facility with Administrative Offices - The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

PUBLIC HEARING

1. Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure - The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District

Consulting Project Planner Weisbrod described the property and the accessory structures. He noted that staff recommended denying the variance. He commented that staff received five

phone calls in opposition to the variance and two in support. However, staff was unable to find special circumstances to approve the variance.

Commissioner Halliday asked if the front door faces Cascade or Hickory and asked why the designated area is considered the back yard.

Principal Planner Patenaude said the way the subdivision is laid out, the front yard would normally be Hickory. Typically the narrow dimension of the lot would be the front yard, however, the determination of the rear yard is left to the City. To insure adequate open space for this home, it was determined that the front yard is Hickory and the rear yard is the opposite.

Commissioner McKillop asked how long has this structure been there.

Consulting Project Planner Weisbrod stated that the owner said it was there 35 years ago when he bought the house, and there had been no complaints about it in all that time.

Commissioner Caveglia then asked why it was on the agenda for discussion.

Consulting Project Planner Weisbrod explained that there was a complaint made to Community Preservation, apparently from someone in the neighborhood.

The public input portion opened at 7:42 p.m.

Applicant Ernest Armijo said he would do whatever it would take to make it better. He said he needs the shed. He then read a statement from a neighbor, Gloria Kennedy, who could not attend. She said the shed poses no threat to the neighborhood and should not be removed. He then read a statement from neighbors across the street who supported the application as well.

Commissioner Halliday asked about the neighbor living immediately next door to the left on Cascade and whether they had expressed an opinion.

Consulting Project Planner Weisbrod said he had received no response from those neighbors, that house is for sale.

Commissioner Caveglia complimented the applicant for their upkeep of the property. He said he thought this issue was the roof and asked Mr. Armijo whether he was willing to re-roof and make the shed similar to the house.

Mr. Armijo said he would be willing to do that if that is what it takes.

Commissioner Caveglia added that if the applicant was willing to stucco the shed and replace the roof, this was a special case that deserves some consideration

Commissioner McKillop asked of what use is the shed.

Mr. Armijo explained that the shed is only a storage/work area.

MINUTES



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Commissioner Zermeño asked whether more landscaping might be placed in front of the fence, to screen the shed from the street.

Mr. Armijo explained that this area is cement.

Danny Rabuco, a neighbor said he has known the applicant for ten years. He spoke in favor and felt that this was a conflict neighborhood problem as there are other houses with the same type of facility in the neighborhood.

Mark T. Bouchard indicated that he was cited by Community Preservation and commented on his violation of side access parking. He felt that this was selective enforcement and discrimination of the City's residents, and he felt that staffs in Planning, and Community Preservation are often in conflict. He said anonymous complaints should not be permitted.

Commissioner Caveglia asked what Mr. Bouchard had done in violation of the City Ordinances. He agreed that this was a different issue.

Harry Deane, a neighbor, spoke in favor of the applicant. He recognized the need for Community Preservation and neighborhood support. He reported that as he walked around the block he noted the most serious problem in the neighborhood is a parking shortage.

Chairperson Bogue closed the public hearing at 8:00 p.m.

Principal Planner Patenaude commented that the structure appears to have been constructed without any building permit. He noted that a permit would need to be applied and that the structure might need to be completely rebuilt to bring it into code compliance and the City requires at least a 5-foot setback. It would be a chore for Mr. Armijo to go through the permit process. He then added, were the variance to be approved, staff would need to bring it back at a future meeting with conditions of approval and findings.

Commissioner Sacks confirmed that the building had been at this location for 35 years. She then asked about legal side parking on the concrete on the side yard.

Principal Planner Patenaude indicated that the parking might be illegal. However, there is the possibility of providing parking within the rear yard, with restrictions.

Commissioner Halliday moved, seconded by Commissioner Sacks, to deny the variance. She noted that she is a proponent of allowing flexibility in the older neighborhoods. However, in this case there needs to be at least a five-foot variance. She said she could not make findings to accept the variance.

Commissioner Zermeño spoke against the motion. He said he felt that since the owner had

already used the shed for 35 years, he should be allowed to keep it. He said that in our older neighborhoods, he felt that there might be room for growth for their properties.

Commissioner Thnay said this was a difficult decision because this structure has been around for 35 years, as well as for a good neighbor's intent. However even if we grant this variance, the shed would have to be rebuilt. Staff indicated that through proper requests, the applicant could apply for a building permit to allow a legal shed to be built under public code. In either way, the cost would be a significant amount of investment.

Commissioner McKillop said approving the variance would probably mean rebuilding the building from scratch. She encouraged Mr. Armijo to plan, get the correct permit and build a new shed that conforms to the yard requirements.

Commissioner Sacks said members constantly wrestle with the problem of how to allow the older neighborhoods to expand their homes. However, she was not willing to approve illegal facilities.

Commissioner Caveglia said he, too, struggled with the issue, and decided that if the applicant is going to have to tear it down anyway, he might as well come back to the Planning Department and build a new one correctly.

The motion carried by the following vote:

AYES:	COMMISSIONERS	Halliday,	Thnay,	Sacks,
		McKillop		
	CHAIRPERSON	Bogue		
NOES:	COMMISSIONER	Zermeño		
ABSENT:	None			
ABSTAIN:	None			

~~3 Referral by the Planning Director - Administrative Use Permit Application No. PL-2002-0262 - Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) - Request to Convert an Existing Theater to a Religious Facility with Administrative Offices - The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District~~

~~Associate Planner Emura indicated that the Heart of the Bay Christian Center now owns the property. He described the location and their previous location as well as the conversion improvements. The theatre building would give them a total of 30,000 square feet within the building with an addition. They would replant 31 trees that were severely pruned and add a substantial number of others as well. He noted that in the 90's a number of commercial buildings were turned into non-commercial uses within this area along Hesperian Boulevard and La Playa Court. The Southgate Neighborhood Task Force expressed concern that these commercial properties were being converted to non-commercial uses. As a policy, they recommended that the commercial strip along Hesperian Boulevard be retained. The Korean Baptist Church and the San Leandro Elks Lodge comprise 15 percent non-commercial use in this area. The approval of this project would make it 43 percent non-commercial use in the area. He noted that this is an~~



CITY OF HAYWARD AGENDA REPORT

Meeting Date: 9/12/02

Agenda Item: 1

TO: Planning Commission

FROM: Norman Weisbrod, Consulting Project Planner

SUBJECT: Variance Application No. PL-2002-0400 – Ernest Armijo (Applicant/Owner): Request to Retain an Attached Shed that is Situated 4' 4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May Be Covered; For an Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure

The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District.

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations; and
2. Deny the variance and the exception subject to the attached findings.

BACKGROUND:

The property is located at the northwest corner of Cascade Street and Hickory Avenue. The lot has 95 feet of frontage on Cascade Street and 60 feet of frontage on Hickory Avenue with an area of 5,700 square feet.

The property is developed with a single-family home with an attached two-car garage. A storage room that is 11' 6" by 22' (253 square feet) was added to the home alongside the garage without a building permit. The addition is constructed of plywood with a shed type corrugated metal shed roof and windows along the wall facing the rear of the property. Access to the addition is from the attached garage.

The following are the yard requirements for an addition to a home in the RS zoned property:

- Attached addition: A single-story addition may be constructed as close as 10 feet from the rear property line as long as the expansion does not occupy more than 20 percent of the required rear yard.

The home on this property was built 15'10" from the rear property line (20' required) and already occupies 11 percent of the required rear yard. As such, it is a legal nonconforming structure. If the existing room addition were modified to provide a 10-foot rear setback, it would conform to the rear yard requirements for an addition to the home as well as rear yard coverage requirements.

Staff believes that the required findings to approve the variance to the rear yard setback for the room addition as built cannot be made. The parcel is equal in size and shape to other corner parcels in the same tract of homes. The placement of the home on the parcel is also similar to other corner parcels in the vicinity. It would be possible for the property owner reduce the area of the addition or locate a detached shed elsewhere on the property without the need for a variance.

With respect to the City's Design Guidelines, the exterior of an addition or a detached accessory structure must be constructed to match the design of the home, including the roof material and the exterior wall surface covering. There is no basis for permitting a room addition that is incongruous with the architecture of the home.

Staff received five phone calls in opposition to the variance. The callers' concerns were that other neighbors would want similar sheds and that it is unattractive. Staff also received two calls in support of retention of the shed with the rear yard variance. Both callers commented that this is one of the more attractively maintained properties in the neighborhood.

ENVIRONMENTAL REVIEW

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations.

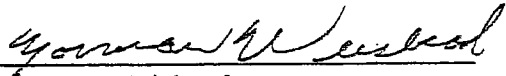
PUBLIC NOTICE

On August 30, 2002, a Notice of Public Hearing for the Planning Commission meeting was mailed to all property owners and residents within 300 feet of the project site.

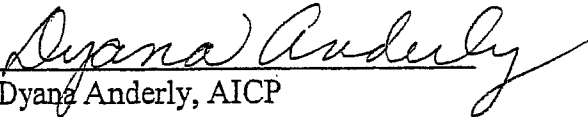
CONCLUSION

It is staff's opinion there are no special circumstances applying to this property that would support the granting of a variance to the rear yard setback for the shed. There is room on the property to construct a detached shed without the need of a variance. Other homes in the vicinity have not been granted variances to reduce the required rear yard for the construction of a shed attached to the home.

Prepared by:


Norman Weisbrod
Consulting Project Planner

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
- C. Site Plan



VARIANCE APPLICATION NO. PL-2002-0400

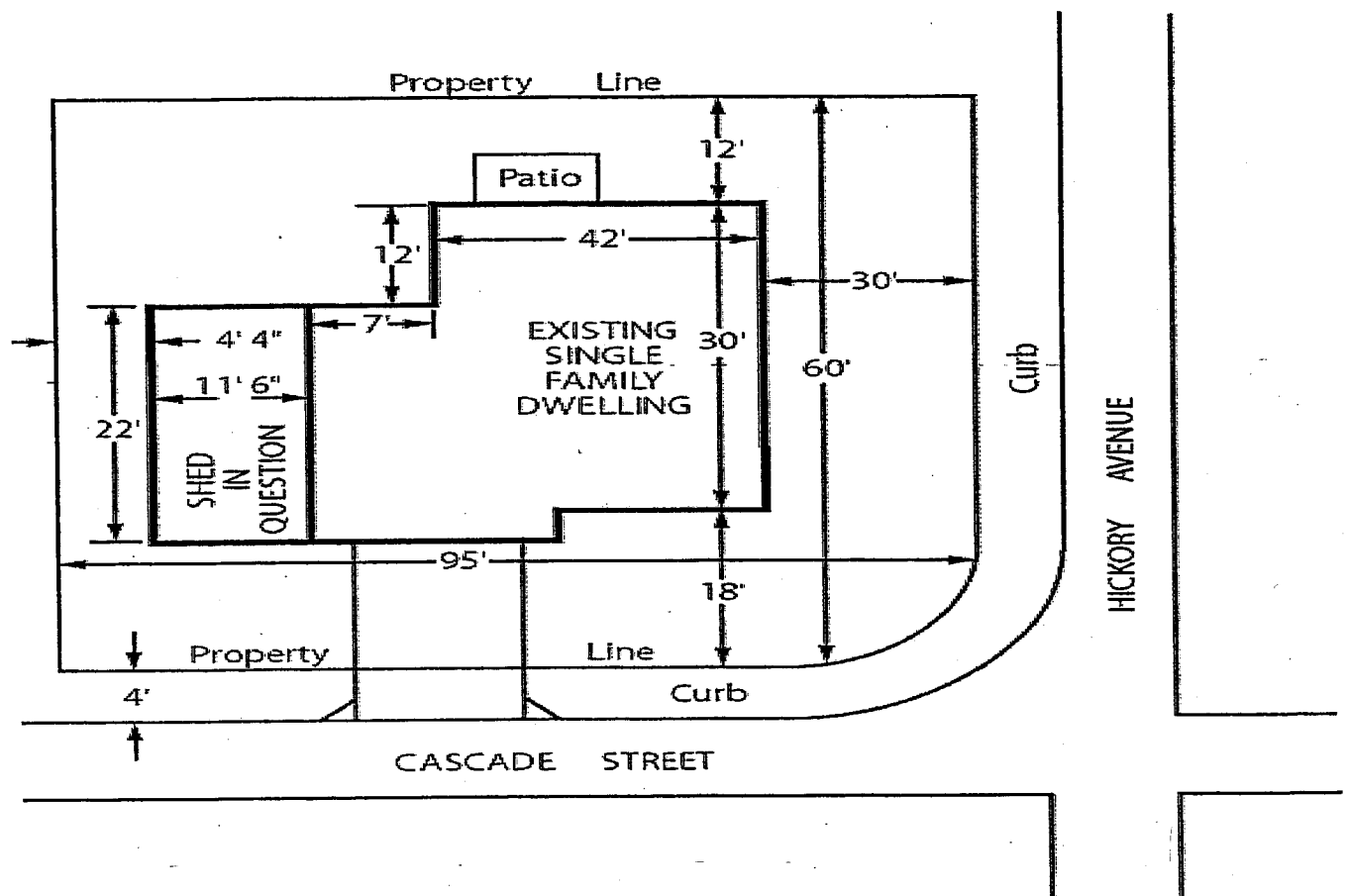
Ernest Armijo (Applicant/Owner)

26476 Cascade Street

FINDING FOR DENIAL

Findings for Denial – Request to reduce a required yard from 10 feet to 4 feet 4 inches and to retain an existing shed attached to the garage and for an exception to the City's Design Guidelines which require that accessory structures match the house.

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations.
- B. There are no special circumstances applicable to the property regarding this variance request or the exception in that the property is identical in size to other corner parcels in the surrounding neighborhood and the placement of the home on the property is similar to other corner lots in the vicinity.
- C. Strict application of the Zoning Ordinance and the City's Design Guidelines would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that there is adequate room at the rear of the home to construct a detached storage shed in conformance with the setback requirements.
- D. The variance and exception would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that variances have not been approved for other properties in the vicinity for an attached shed that extends into the required rear yard setback.



DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

Tral
10/30/12

RESOLUTION FINDING THE PROJECT CATEGORICALLY
EXEMPT FROM CEQA REVIEW AND DENYING
VARIANCE APPLICATION NO. PL-2002-0400 AND
RELATED REQUEST FOR EXCEPTION TO CITY'S DESIGN
GUIDELINES

WHEREAS, there has been presented to the City Council of the City of Hayward Variance Application No. PL-2002-0400 to retain a storage room 4' 4" from the rear property line where at least 10 feet is required; to allow 33 percent of the rear yard to be covered where a 20 percent maximum is permitted and for an exception to the City's Design Guidelines which requires the accessory structures to match the primary structure on property located at 26476 Cascade Street in an RS (Single-Family Residential) District; and

WHEREAS, the Planning Commission denied the variance and the exception at its meeting on September 12, 2002; and

WHEREAS, the matter was appealed to the City Council within the time and manner provided by law; and

WHEREAS, the City Council finds and determines that:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Alterations.
2. There are no special circumstances applicable to the property regarding this variance request or the exception in that the property is identical in size to other corner parcels in the surrounding neighborhood and the placement of the home on the property is similar to other corner lots in the vicinity.
3. Strict application of the Zoning Ordinance and the City's Design Guidelines would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that there is adequate room at the rear of the home to construct a detached storage shed in conformance with the setback requirements.

4. The variance and exception would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated, in that, variances have not been approved for other properties in the vicinity for an attached shed that extends into the required rear yard setback.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings, the City Council of the City of Hayward hereby denies Variance Application No. PL-2002-0400 and the request for an exception to the City's Design Guidelines.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward